Docket No.: 06-0525
R.O.M.: 6/10/08
Deadline: 6/14/08

MEMORANDUM

TO: The Commission

FROM: Claudia E. Sainsot, Administrative Law Judge

DATE: June 5, 2008

SUBJECT: Illinois Commerce Commission,
On its Own Motion

Consideration of the federal standard on Interconnection in Section 1254 of the Energy Policy Act of 2005.

RECOMMENDATION: Enter the attached Post-Exceptions Second Notice Order.

Procedural Background

This Commission commenced this docket on July 26, 2006 to consider 16 U.S.C. Sec. 2621(d)(15), as the Federal EPAct requires every state commission to commence consideration of 16 U.S.C. Sec. 2621(d)(15), or set a hearing date for consideration of this statute by August 8, 2006. (16 U.S.C. Sec. 2621(a); 16 U.S.C. Sec. 2622(b)(5)(B)). This statute provides, in pertinent part:

> Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.

(16 U.S.C. Sec. 2621(d)(15)). On July 25, 2007, this Commission issued an Interim Order, in which, it concluded that IEEE Standard 1547 shall be the

electrical standard for interconnection. However, in that Order, it noted that there were many more issues to address regarding interconnection, and therefore, this docket would proceed to develop standards regarding those issues.

On March 26, 2008, this Commission issued an order submitting an Emergency Rule to the Joint Committee on Administrative Rules ("JCAR") and also submitting the permanent Rule to JCAR. Staff and the parties submitted Comments regarding the Rule on April 25, 2008. The Parties and Staff filed Reply Comments on May 9, 2008. Notice of the Proposed (permanent) Rule was published in the Illinois Register on April 18, 2008. However, the Emergency Rule became effective on April 1, 2008. It will expire within 150 days from that date, or, approximately on August 29, 2008. (5 ILCS 100/5-45(c)).

Participating in this docket were Commission Staff, the Ameren Illinois Companies, ("Ameren") the Commonwealth Edison Company, ("ComEd") the Environmental Law and Policy Center, (the "ELPC") the Illinois Attorney General, (the "AG") the City of Chicago, (the "City" or "Chicago") MidAmerican Energy Company, ("MidAmerican") and the Interstate Renewable Energy Council ("IREC").

A Public Forum convened on May 20, 2008. An Administrative Law Judge's Proposed Order (an "ALJPO") issued on May 23, 2008. The parties and Staff filed and served Briefs on Exceptions on May 30, 2008. MidAmerican did not file a Brief on Exceptions. Pursuant to an agreement amongst the parties, no Reply Briefs on Exception were filed in this docket.

The Issues in the Briefs on Exception

On Exceptions, many of the parties did not contest some of the more controverted issues. No party contested the conclusion finding that there should be a rule governing interconnection. (Issue V(a)). And, Ameren was the only utility to mention the indemnity clauses in the Interconnection Agreements. (Issue VI(c), pp. 49-55). Below is a brief summary of issues addressed in the Briefs on Exception.

The Scope of the Rule Sections 466.10 and 466.40 (p. 12-15).

The ALJPO determined that the Rule should not be altered to include those interconnectors with capacitance of greater than 10MVA. It acknowledged that there is a need for a rule regarding these larger generators, as there are situations where these larger generators are not subject to the applicable Regional Transmission Organization's ("RTO") rules or those of the Federal Energy Regulatory Commission (the "FERC"). Also, apparently, on occasion, the FERC has declined to exercise its jurisdiction over interconnections. However, Staff and the utilities pointed out that the Rule, in its current form, is not designed for these larger connectors. Specifically, the electrical standard, IEEE Standard

1547, is not appropriate for these interconnectors. Also, the timeframes and screens in the Rule are not appropriate for these interconnectors. The ALJPO concluded that, because there is a need for a rule regarding these larger interconnectors, a rulemaking should commence for the purpose of determining the standards to apply to them.

However, on Exceptions the ELPC and the AG argued that initiating a new rulemaking does not "fix the problem now," as larger generators need access to the standardized business terms and the dispute resolution provision in the Rule. (ELPC Brief on Exceptions at 6-7). The Post-Exceptions Proposed Order (the "PEPO") declines to increase the scope of the Rule, as, the timeframes in the Rule may not be practicable for these larger generators, and, accommodating the largest of distributed generation interconnections could require utilities to make modifications. It concludes that the better approach is to determine, in an organized fashion through a rulemaking, what timelines and other procedures are appropriate for these larger generators. Also, after the extensive workshops that Staff conducted in this docket, many issues have been resolved. The PEPO adds specific language in the Findings and Ordering paragraphs allowing such rulemaking to commence.

Sections 466.60(h) and (i) External Disconnection Switches for Level 1 Interconnectors

The ALJPO concluded that these two sections of the Rule, which allow utilities to require interconnectors to install isolation devices, (such as switches) should remain in the Rule, as isolation devices are, necessarily, safety devices which ensure that utility personnel and first responders have a visible means of turning a Level 1 generator off.

On Exceptions, the City, the ELPC and IREC asserted that this conclusion is erroneous because the newer, UL-approved inverters do not back feed onto the grid during power outages.[1] Also, a first responder can disconnect a generator by using the circuit breaker panel.

The PEPO concluded that the Rule should remain unchanged, as there are many types of emergencies, including, but, certainly not limited to, power outages. In reality, first responders are called upon to address many types of emergencies, including floods, tornadoes, fires, and man-made emergencies. It further concludes that, from the information provided by these parties, during a fire, flood, or during many other types of emergencies, the inverter would not act to turn the power off. Also, while a circuit breaker can be used many times during an emergency, a first responder may not know to seek out the circuit breaker panel, or may not have access to the circuit breaker panel on the premises, due to the nature of the emergency. (*e.g.,* a flood). It further notes that, irrespective of the

[1] "UL" is Underwriter's Laboratories. (*See*, 466.30).

safety of first responders, there is the matter of the safety of utility personnel. All three utilities have asserted that such a device is necessary to ensure that a person working on the line can turn the power from the generator off.

Section 466.110(a)(6) Elimination of the 15% Maximum Load Screen for Level 3 Interconectors (pp. 33-35).

It appears that Level 3 interconnectors hook up to the grid solely so that they can have back-up power, as they cannot export power onto the grid. It appears that there is no other reason for a Level 3 interconnector to undertake the expense of interconnection. Staff averred that this screen is necessary because, if an interconnection facility fails to operate, a utility's distribution system must be able to supply the load that the interconnected facility supplied.

In comments, IREC and the ELPC argued that the 15% maximum load screen requirement is unnecessary because Level 3 interconnectors do not export power onto the grid. Because these parties did not discuss what would occur when an interconnector actually used power generated by a utlity, the ALJPO concluded that this requirement should remain in the Rule, as it is necessary to ensure that a utility's system can supply power safely and reliably to Level 3 interconnectors.

On Exceptions, these parties added nothing new to their arguments. Therefore, their Exceptions were not mentioned in the PEPO.

Section 466.102(c) Level 4 Queue Positions (pp. 36-38)

In its Comments, Ameren argued that the Level 4 queue positions should be changed. The language Ameren proposed set up a complicated maze to determine queue priority for Level 4 interconnectors. As a result, the ALJPO concluded that the Rule should be unchanged. However, in its Brief on Exceptions, Ameren clarified that it only seeks to add language to the Rule that recognizes that a utility can process this queue sequentially on a circuit-by-circuit basis.

The PEPO found that Ameren's approach, as is defined in its Brief on Exceptions, is reasonable, as, it is an engineering inevitability that all improvements to a distribution circuit should be planned sequentially or at the same time, when possible. Therefore, this section of the Rule was amended to provide:

> c) After an interconnection request is deemed complete, the EDC shall assign a queue position to it based upon the date the interconnection request is determined to be complete. *When assigning a queue position, an EDC may consider whether there are*

> *any other interconnection projects on the same distribution circuit. If there are other interconnection projects on the same distribution circuit, the EDC may consider them together. If an EDC assigns a queue position based on the existence of interconnection projects on the same distribution circuit, the EDC shall notify the applicant of that fact when it assigns the queue position.* The queue position of an interconnection request is used to determine the cost responsibility for the facilities necessary to accommodate the interconnection. The EDC shall notify the applicant as to its position in the queue. If the interconnection request is subsequently amended, it shall receive a new queue position based on the date that it was amended.

Whether the Interconnection Agreements Should Exist (pp. 43-47).

The ALJPO concluded that the two Interconnection Agreements should be mandatory, meaning that the utilities are required to use these contracts. It reasoned that having uniform contracts throughout the state creates clarity and simplicity for potential interconnectors and for the manufacturers and installers of interconnection products. It ruled that the public interest is served by using the interconnection applications and interconnection contracts, as well as the Certificate of Completion, (Appendices A, B, C and D to the Rule) on a mandatory basis.

On Exceptions, Ameren argued that utilities should be allowed to submit *pro forma* contracts for Commission approval as tariff filings. This contention was rejected in the PEPO because contracts are legal documents and it has no legal standard for Staff to apply when reviewing *pro forma* contracts. Moreover, as Staff and numerous parties have averred, there is a need for predictability, uniformity, and something that gives meaningful rights to interconnectors. Allowing utilities to submit *pro forma* contracts for Commission approval does not achieve these goals.

Indemnification for Third-Party Injuries (pp. 49-55).

In their Comments, both Ameren and ComEd contested provisions in the two Interconnection Agreements that require utilities to indemnify interconnectors when third-parties are injured due to a utility's negligence or willful actions. They asserted, essentially, that these indemnification provisions will subject utilities to personal injury lawsuits.

The ALJPO explained, in detail, that, under current Illinois law, an indemnification provision does not determine liability. The provisions in question determine who or what pays when a utility is liable for the third-party injuries that they cause. The ALJPO cited state statutes regarding current tort law and the Public Utilities Act. It additionally examined the relevant history of tort law, as, a few decades ago, an indemnity provision could determine liability. It concludes that in Illinois, the law determines who or what is liable in tort. The indemnity provisions just ensure that an

interconnector does not incur expenses unnecessarily due to a utility's negligence or willful conduct.

Nevertheless, Ameren argued in its Brief on Exceptions that the Interconnection Agreements should not require utilities to indemnify interconnectors when their tortious actions injure third-parties because any competent plaintiff's lawyer will sue the homeowner, the utility and the manufacturer of the interconnection equipment. This argument was rejected in the PEPO, as, nothing in the indemnification provisions confer liability on a utility.

Level 1 Insurance (pp. 54-57).

The ALJPO added language to the Level 1 interconnection application/agreement requiring Level 1 interconnectors to add the pertinent utility as an additional insured on their homeowners' insurance policies or, in the case of persons or entities without homeowner's insurance, (*e.g.,* businesses) a comparable general liability insurance policy.

However, the ELPC, AG and IREC voiced a very real concern in their Briefs on Exception. It can be very difficult for a homeowner to add a utility as an additional insured on its homeowner's insurance policy, as such policies are very standardized.

The PEPO adds language requiring a Level 1 interconnector to have homeowner's insurance, or, like general liability coverage, as, a homeowner is really only required to have homeowner's insurance when that homeowner has a mortgage. Requiring general liability coverage helps ensures that a utility is not unnecessarily "dragged in" to litigation. It also helps ensure that any person who is injured by interconnection facilities is compensated for that injury. Additionally, the PEPO deleted the requirement to add a utility as an additional insured and replaced it with language stating that, when possible, the applicable utility shall be named as an additional insured. As interconnection becomes more widespread, it is quite possible that, in the near future, insurers will recognize the need for flexibility on this issue.

Deposits (pp. 57-61)

The ALJPO concluded that the provisions in the Interconnection Agreements requiring an interconnector to pay 100% of the estimated cost of construction and installation of interconnection facilities, as well as 100% of the cost of any study, should remain, as a lesser deposit could create a situation, in which, ratepayers pay for any work done by a utility that is not paid for by an interconnector. It also concluded that there should be no letters of credit, bond, guarantees and like items in lieu of money for any deposit, as these instruments are just promises of future payment; they are not the same as cash. Finally, it ruled that the utilities should not be required to pay interest on deposits, as, in most cases, (at least in the case of deposits for studies) the money will not be held for very long.

On Exceptions, however, IREC argued, essentially, that the timeframes in the Rule for remitting deposits for studies is not fair. Advance payment for study agreements is due at the point at which an interconnector is first in the queue, irrespective of when that study will actually be performed. In contrast, the deposit required for the construction and installation of interconnection facilities is due at least 20 business days before this work begins. The PEPO concludes that the deposit requirements for the three studies should be congruous with the deposits for the construction and installation of interconnection facilities. It changes the deposit requirement for these three studies to the same requirement for interconnection construction, which is, at least 20 business days before the time when the study commences.

Also, IREC pointed out that it can take years before some construction and installation projects are completed. Requiring a 100% deposit with no interest to accrue deprives interconnection customers of any interest on the funds deposited.

The PEPO adopts a practice that is used in the construction industry, which is, to allow the funds to be held by a third-party, (such as a bank or other financial institution) with interest to inure to the benefit of the interconnector. It adds language to the Rule to require a utility to inform an interconnector of the estimated date of completion of the building or installation of interconnection facilities. When the construction and/or installation completion date is 90 days or more from the date of such notification, the parties can select an institution to hold the funds in escrow. In this way, interconnectors can receive interest, but, the awarding of interest can have no impact upon ratepayers. At the same time, the 90-day provision ensures that any “red tape” involved in setting up an escrow with that third-party will only occur when an interconnector will receive a reasonable amount of interest.

Accordingly, I recommend that the Commission enter the attached Second Notice Order.

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